

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
WIRELESS STRATEGIES, INC.)	File Nos. 0002925444, 0002925448, and
)	0002925450
Applications For License to Operate Common)	
Carrier Fixed Point-to-Point Microwave Facilities)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: June 28, 2007

Released: June 29, 2007

By the Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we address Verizon's Petition to Deny or, Alternatively, to Impose Conditions¹ on the above-captioned applications of Wireless Strategies, Inc. (WSI) for authority to operate Common Carrier Fixed Point-to-Point Microwave Facilities in Pennsylvania and New Jersey; WSI's Reply Comments to Verizon's Petition;² Verizon's Reply to WSI's Reply;³ and WSI's Reply to Verizon's Reply.⁴ For the reasons discussed below, we deny the Verizon Petition in part, but impose a condition on any grant of the above-referenced applications to the extent indicated herein. We also dismiss WSI's Reply as untimely, and Verizon's Reply and WSI's Reply to Verizon's Reply as moot.

II. BACKGROUND

2. On February 26, 2007, WSI filed the instant applications for three new point-to-point fixed microwave stations in Pennsylvania and New Jersey.⁵ On February 23, 2007, prior to filing the subject Applications, WSI filed a petition for declaratory ruling seeking clarification of the Commission's Part 101 rules pertaining to licensing and coordination for fixed point-to-point services.⁶ The Commission's current licensing regime for point-to-point services requires frequency coordination and the filing of an application for each microwave link or path containing detailed information concerning the proposed operation.⁷ In order to secure such authorizations, applicants must specify the latitude and longitude of the transmitter in their applications to an accuracy of one second;⁸ coordinate each operation specifying

¹ Petition to Deny or, Alternatively, to Impose Conditions, filed by Verizon (Apr. 6, 2007) (Verizon Petition).

² Reply Comments to Verizon's Petition, filed by Wireless Strategies, Inc. (Apr. 27, 2007) (WSI Reply).

³ Reply to WSI's Reply, filed by Verizon (May 4, 2007) (Verizon Reply).

⁴ Reply to Verizon's Reply, filed by Wireless Strategies, Inc. (June. 21, 2007) (WSI Reply to Verizon's Reply).

⁵ File Nos. 0002925444, 0002925448 & 0002925450 (filed Feb. 26, 2007) (Applications).

⁶ Request for Declaratory Ruling filed by Wireless Strategies Inc. (Feb. 23, 2007) (WSI Request).

⁷ See 47 C.F.R. §§ 101.21(e), (f), 101.103.

⁸ 47 C.F.R. § 101.21(e).

the transmitter location to an accuracy of one second;⁹ and modify the license and coordinate any change to the location of the transmitter by more than five seconds in latitude or longitude or both.¹⁰ Thus, if additional transmitters are added, the Commission's current rules require additional coordination and modification of the license.¹¹

3. WSI's Request, however, seeks a Commission declaration that Part 101 permits a licensee to simultaneously coordinate multiple links within a single point-to-point coordination area under certain conditions.¹² Specifically, WSI posits that such coordination is permitted if all transmitters within the coordination area of the main microwave path collectively comply with the Commission's Part 101 antenna standards and frequency coordination procedures (a process WSI labels "concurrent coordination").¹³ WSI claims that the requested ruling is needed to eliminate any uncertainty as to the lawfulness of concurrent coordination.¹⁴ WSI asserts that such coordination procedures will enhance spectrum efficiency "by allowing a licensee to reuse the licensed spectrum in a given area," and, in particular, will allow licensees to provide additional service reusing licensed spectrum on multiple paths through the use of distributed radiating elements ("DREs").¹⁵

4. On April 6, 2007, Verizon filed the Verizon Petition against WSI's Applications, primarily challenging the Request but otherwise asking the Commission to deny the Applications or impose a condition that disallows concurrent coordination and operation of DREs with the stations.¹⁶ Verizon states that it does not expect to suffer interference if the facilities proposed by WSI are "operated strictly in accordance with the technical parameters specified in the Application[s]."¹⁷ Verizon claims, however, that "the pending Request for Declaratory Ruling and the company's website¹⁸ suggest that Wireless Strategies intends to operate the proposed facilities [other than as a traditional microwave system] . . . utilizing unspecified and uncoordinated DREs."¹⁹ Verizon asserts that such operation could cause serious interference to Verizon and other licensees and would invalidate the previously conducted coordination.²⁰ In addition, Verizon characterizes WSI's proposal as an attempt to shift microwave services to a geographic area licensing scheme.²¹

5. On April 24, 2007, WSI filed the WSI Reply.²² On May 4, 2007, Verizon filed the Verizon Reply.²³ On June 21, 2007, WSI filed the WSI Reply to Verizon Reply.²⁴

⁹ 47 C.F.R. § 101.103(d).

¹⁰ 47 C.F.R. § 1.929.

¹¹ 47 C.F.R. §§ 1.929, 1.947.

¹² WSI Request at 1.

¹³ See 47 C.F.R. §§ 101.115, 101.103; WSI Request at 5-7.

¹⁴ WSI Request at 1.

¹⁵ WSI Request at 9.

¹⁶ Verizon Petition at 1-2. The Petition was filed on behalf of MCI Communications Services, Inc., which operates point-to-point microwave facilities that Verizon claims could be subject to interference from WSI's proposed facilities. Verizon Petition at 1 n.1.

¹⁷ Verizon Petition at 3.

¹⁸ WSI's website is www.wirelessstrategies.net.

¹⁹ Verizon Petition at 3.

²⁰ Verizon Petition at 3.

²¹ Verizon Petition at 6.

²² WSI Reply.

III. DISCUSSION

6. As an initial matter, we dismiss WSI's Reply as untimely. The deadline for WSI to respond to the Verizon Petition was April 19, 2007,²⁵ yet WSI did not respond until April 27, 2007. Furthermore, WSI did not submit a request for extension of time or waiver of the Commission's rules in conjunction with the untimely response. Thus, the WSI Reply is untimely and must be dismissed. Since we are dismissing the WSI Reply, we will also dismiss the Verizon Reply and the WSI Reply to the Verizon Reply as moot.²⁶

7. We deny Verizon's Petition to the extent that it seeks denial of WSI's Applications because Verizon has failed to establish that the Applications are defective or otherwise warrant denial. A petition to deny must contain specific allegations of fact sufficient to make a prima facie showing that the petitioner is a party in interest and that a grant of the application would be inconsistent with the public interest, convenience and necessity.²⁷ Such allegations of fact must be supported by affidavit of a person or persons with personal knowledge thereof.²⁸ The Verizon Petition fails to allege any facts that demonstrate that granting the Applications would be detrimental to the public interest, convenience or necessity. Indeed, Verizon does not allege that the operations proposed in the Applications violate the Commission's rules in any way, and, in fact, concedes that if the proposed facilities are operated in accordance with the technical parameters specified in the Applications, there will be no interference to Verizon's existing operations.²⁹ Verizon has not offered any engineering evidence to establish that the technical specifications proposed by WSI are inconsistent with the Commission's rules, nor has it supported its allegations with the requisite affidavits in accordance with Section 1.939(d) of the Commission's Rules. Furthermore, our own analysis of WSI's proposed technical parameters leads us to conclude that the specifications for WSI's proposed systems are consistent with the Commission's Rules.³⁰ Moreover, WSI's Applications appear to contain all the required information in accordance with the Commission's licensing rules for point-to-point microwave systems, and have been properly coordinated pursuant to Section 101.103 of the Commission's Rules. Therefore, we conclude that Verizon has failed to establish any basis for denying WSI's pending Applications.

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²³ Verizon Reply.

²⁴ WSI Reply to Verizon Reply.

²⁵ Oppositions to petitions to deny in non-auctionable services are due ten days after the petition is filed. 47 C.F.R. §§ 1.45(b), 1.939(f). Because Verizon served its petition by mail, WSI had an additional three business days to respond. 47 C.F.R. § 1.4(j). Thus, any opposition from WSI was due on April 19, 2007. We also note that WSI's Reply to Verizon's Reply is an unauthorized pleading as the last permissible pleading for petitions to deny is a reply to an opposition to such a petition. See 47 C.F.R. § 1.45(c).

²⁶ Our dismissal of the WSI Reply and Verizon Reply is limited to arguments made with respect to disposition of the instant Applications. With respect to the WSI Request, the Wireless Telecommunications Bureau has held that it will consider the WSI Reply and Verizon Reply to the extent those pleadings address the WSI Request. See Wireless Telecommunications Bureau Seeks Comment on Request for Declaratory Ruling by Wireless Strategies, Inc. Regarding Coordination of Microwave Links Under Part 101 of the Commission's Rules, *Public Notice*, DA 07-2684 (WTB Jun. 19, 2007) at 2 n.11 (*Comment Public Notice*).

²⁷ See 47 C.F.R. § 1.939(d).

²⁸ *Id.*

²⁹ Verizon Petition at 3.

³⁰ See 47 C.F.R. §§ 101.113, 101.115(b).

8. Nonetheless, we agree with Verizon that if the subject Applications are granted, WSI should not attempt to operate these stations in accordance with the proposals in WSI's pending Request. While we take no position on the Request at this time, we note that it raises novel technical issues that require careful consideration and input from other Commission licensees that could be affected by WSI's Request. Accordingly, we have released a public notice seeking public comment on WSI's Request.³¹ In adjudicating WSI's Request, we will consider all comments by interested parties, including the arguments made by Verizon in its Petition, which are primarily directed towards WSI's Request. In the meantime, we conclude that it is appropriate to subject any grant of WSI's Applications to the condition that WSI operate solely pursuant to the technical specifications set forth in its Applications unless and until its Request is granted. Furthermore, pending resolution of its Request, WSI may not attempt to implement its "concurrent coordination" process or add any transmitters, transceivers, or DREs without prior Commission approval.

IV. CONCLUSION AND ORDERING CLAUSES

9. We conclude that Verizon has not established that WSI's Applications are defective in any way or warrant denial. We further conclude that any grant of the subject applications should be subject to the condition that WSI operate solely pursuant to the technical specifications set forth in its Applications. Accordingly, we deny the Verizon Petition in part and direct the Broadband Division's licensing staff to process WSI's Applications in accordance with the conditions set forth herein.

10. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.939 of the Commission's Rules, 47 C.F.R. § 1.939, the Petition to Deny or, Alternatively, to Impose Conditions filed by Verizon on April 6, 2007 IS GRANTED to the extent indicated and is otherwise DENIED.

11. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Sections 1.45(b) and 1.939(f) of the Commission's Rules, 47 C.F.R. §§ 1.45(b) and 1.939(f), that the Reply Comments to Verizon's Petition to Deny, or, Alternatively, to Impose Conditions filed by Wireless Strategies, Inc. on April 27, 2007 IS DISMISSED.

12. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Sections 1.45(c) and 1.939(f) of the Commission's Rules, 47 C.F.R. §§ 1.45(c), 1.939(f), that Verizon's Reply to Wireless Strategies' Reply Comments to Verizon's Petition to Deny, or, Alternatively, to Impose Conditions filed by Verizon on May 4, 2007 IS DISMISSED.

13. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Sections 1.45(c) and 1.939(f) of the Commission's Rules, 47 C.F.R. §§ 1.45(c) and 1.939(f), that the Reply to Verizon's Reply filed by Wireless Strategies, Inc. on June 21, 2007 IS DISMISSED.

14. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.945(e) of the Commission's Rules, 47 C.F.R. § 1.945(e), that any grant of the Applications shall contain the following condition:

Any operation pursuant to this authorization shall be strictly in accordance with the technical parameters proposed in the application. Wireless Strategies, Inc. may not

³¹ See *Comment Public Notice*.

operate these facilities as proposed in its February 23, 2007 Request for Declaratory Ruling unless and until the Commission grants the Request for Declaratory Ruling.

15. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.945 of the Commission's rules, 47 C.F.R. § 1.945, that the Broadband Division SHALL PROCESS the Applications filed on February 26, 2007 by Wireless Strategies, Inc. (File Nos. 0002925444, 0002925448, and 0002925450) pursuant to this *Memorandum Opinion and Order* and the Commission's rules and policies.

16. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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